

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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JOEL F. HOLUBAR,		:	
&		:	
MARIANA H. HOLUBAR		:	
	Plaintiffs,	:	
		:	1:04-CV-11850
v.		:	(NG)(JD)
		:	
M/Y SWEET DISTRACTION, <i>in rem</i> ,		:	
CAPTAIN HAMMOND		:	
&		:	
JOHN & JANE DOES		:	
	Defendants.	:	
		:	
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**AFFIRMATION IN SUPPORT OF MOTION FOR LEAVE
TO EXTEND THE TIME FOR SERVICE OF PROCESS**

I, BJORN J. HOLUBAR, an attorney duly admitted to practice before the USDC-DM *pro hac vice* in a related case that may be consolidated herein on the representations of defendants in that case (1:03-cv-12404) affirm the truth of the following under penalty of perjury:

1. I am counsel to Plaintiff, HOLUBAR, and am familiar with the facts relevant to this motion before the Court.
2. This affirmation is being submitted in support of Dr. Holubar's application for leave to extend the time of service of process, and any such further and additional relief as this Court may deem just and proper.

Statement of Facts

3. Plaintiff Holubar, on August 24, on account of defendant's statements and assertions represented that there was another responsible party required, in the avoidance of missing a statute of limitations the filing of the within action as defensive measure.

4. However, in attempting to effect process in this matter, defendants in the prior case provided no relevant contact information for the defendants herein.

4a. Thus, independent inquiry into registrations of the ship name "Sweet Distraction" has revealed numerous vessels with the same name. Reasonable, diligent efforts have been made to investigate and compare the name of the ship with the factual circumstances of this case. To date, the proper defendant has not yet been located.

5. In October of 2004, Plaintiffs Holubar hired Vincent Parco, a private investigator, in order to launch an investigation into the vessel "Sweet Distraction", and locate its owner in order to bring suit. To date, the investigation by Mr. Parco is ongoing.

6. An action was commenced in the United States District Court, District of Massachusetts, on August 24, 2004. The statute of limitations for service of process shall expire on December 24, 2004.

7. Rule 4(m) of the Federal Rules of Civil Procedure permits the court to "direct that service be effected within a specified time, provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period."

8. The court should exercise its discretion to grant the motion for the extension of time for service of process pursuant to FRCP Rule 4(m), given the injury suffered by Plaintiffs and the careful, diligent efforts that have been made to locate the

proper defendant since the action was filed. Because there is no identified defendant to the action to date, no harm or prejudice will result from granting this application.

WHEREFORE, Plaintiffs pray this Court enter an Order GRANTING leave to extend the time of service of process until the proper defendant to the action is located, and any further and additional relief as this court may deem just and proper.

Dated: New York, New York
December 21, 2004

JOEL F. HOLUBAR and
MARIANA H. HOLUBAR,
By their attorneys,

Bjorn J Holubar /s/

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